

REMARKS

Upon entry of the present Response, the claims under consideration are Claims 1-14 and 39-42. Claims 29-38 are removed from consideration hereby in response to a restriction requirement issued by the Examiner. Applicants will now address the Detailed Action with reference to the page numbers or paragraph numbers contained therein.

Election Requirement

Responsive to paragraph 19 of the Detailed Action, the provisional election of Group I, Claims 1-14 and 39-42, is affirmed by the Applicants.

Claim Rejections - 35 U.S.C. §112

At paragraph 21, Claims 1-14 stand rejected under 35 U.S.C. §112, second paragraph, as indefinite for use of the word “lofty” in the preamble of Claim 2. The word “lofty” is complained of as lacking in sufficient antecedent basis.

Applicants respectfully request that the Examiner withdraw this rejection and, if necessary, issue instead an objection to the Claims. Responsive to such an objection, Applicants are willing to amend the preamble of Claim 2 to eliminate the word “lofty”.

It is believed that the issuing of a statutory rejection is unnecessarily harsh in this instance and may result in an unnecessary loss of rights to which Applicants may rightfully be entitled. Applicants cite MPEP §706.03(d) (under the Examiners' Notes to form paragraphs 7.34.05) wherein is noted that: "this form should ONLY be used in aggravated situations where the lack of antecedent basis makes the scope of the claim indeterminate." Applicants do not believe that the use of the term "lofty" in the preamble of one dependent claim is sufficiently aggravating to a clear understanding of the invention as to require a statutory rejection under §112, second paragraph.

Applicants further note that the term "lofty", even if lacking antecedent basis in the preamble of Claim 2, cannot provide the basis for a §112 rejection of the preceding Claim 1.

Applicants further cite MPEP §2173.05(e) which notes that: "obviously, however, the failure to provide explicit antecedent basis for terms does not always render a claim indefinite." It is believed that the present claim is one such case where the scope of the claim is reasonably ascertainable by those skilled in the art and therefore the claim is not indefinite. Therefore, Applicants respectfully request that the rejections under §112 be withdrawn.

Claim Rejections - 35 U.S.C. §102

Per paragraph 22 of the Detailed Action, Claims 1-5, 12, 14, 39 and 40 stand rejected as anticipated by U.S. Patent 4,578,070 to Holtman (hereinafter referred to as "Holtman") under §102(b). Applicants respectfully traverse these rejections on the grounds that Holtman merely discloses a two layer web which is formed and then subsequently corrugated. Holtman does not discuss the orientation of the fibers being out of the plane of the web as is required by the present invention's Independent Claims 1 and 39.

Both Independent Claims 1 and 39 require a "z-direction orientation" of the fibers of the web. The term "z-direction orientation" is explicitly defined at page 7, line 6 of the present application by the language:

"As used herein, the term "z-direction" refers to fibers disposed outside of the plane of orientation of a web. Fig. 3A is a diagram showing a nonwoven web without z-direction fibers. That is, all of the fibers are generally oriented in the direction indicated by arrow 27. By comparison, Fig. 3B is a diagram showing a nonwoven web having z-direction fibers in accordance with this invention. That is, in addition to fibers oriented in the direction of arrow 28, fibers are also oriented in the direction of arrows 29 and 30. The term "as formed z-direction fibers" as used herein refers to fibers that become oriented in the z-direction during forming of the nonwoven web as distinguished from fibers having a z-direction component resulting from post-forming processing of the nonwoven web, such as in the case of mechanically crimped or creped nonwoven webs."

As further made clear at page 4, line 6:

“In contradistinction to the known art, the present invention does not first form a web of material and pleat it.”

Holtman represents the prior art, which is a pleating of the web of the type shown in Fig. 3A (of the present invention). The present invention on the other hand, provides loft to a web at the fiber level, rather than first making a web and then corrugating (folding it) as in Holtman. Thus, the present invention and Holtman are operating at two entirely different levels of construction. The present invention adds loft during web formation, while the prior art, e.g., Holtman, seeks to add loft after web formation by a “transverse folding” (see Holtman Col. 2, line 42).

It is clear that Holtman teaches only a corrugated, or pleated, web and shows no unique structural aspects of fibers within its web such as are taught and claimed in the present invention. The pleating of the web of Holtman only changes the orientation of the overall web, and not the orientation, geometry, or inter-relations of the fibers within the web, as is taught and claimed by the present invention.

Further, the pleating of the web of Holtman will not produce waves within the filamentous structure of the web, nor will it produce any of the claimed loop geometries or wave bonding of the present claims dependent from Claims 1 and 39.

Claim Rejections - 35 U.S.C. §103

Paragraph 25 of the Detailed Action rejects Claims 6-11, 13, 41 and 42 as obvious over Holtman. Applicants respectfully traverse these rejections. Given the above explanation of the completely different structural aspects of the claimed invention versus the corrugated web of Holtman, it is clear that the person having ordinary skill in the art of nonwoven web manufacture would not be lead to the present invention by contemplating the teachings of Holtman.

The Detailed Action states that it would have been obvious to: "...modify the non-woven web fibrous layer orientation with the second fibrous layer of Holtman so as to exemplify the waves in the machine direction which are similar to an elliptical shape,...". Clarification of what is meant by "exemplify" in the reasoning of the rejection is respectfully requested by Applicants. A second, non-final action on the merits of this rejection, is therefore respectfully requested.

Insofar as these rejections are understood, Applicants believe, by way of general discussion, that it is apparent that the teachings of Holtman relate largely to its two layer web with one layer having a higher capillary action than the other (see Col. 2, lines 35-42). After careful review, Applicants believe the purpose of corrugating the web, as set forth in Holtman, is to provide pockets of corrugation into which a superabsorbent can be placed and to provide resilience to the web by

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transferring its bulk to the Z-direction (see Col. 6, lines 25-41). Corrugation is done, after the web is formed, as a separate processing step to accomplish these purposes (see Examples I and II). The present invention needs no such additional processing since it produces a naturally lofty web as first assembled, at the fiber level.

Further, the reasoned statement of motivation with respect to obviousness appears to be a *post hoc* rationalization of obviousness made with the present invention clearly in mind. No reasoned explanation is set forth as to why a person having ordinary skill in the art would be motivated to try and achieve any aspect of the claims of the present invention upon a reading of Holtman. Instead, only a general statement about modifying "the non-woven web fibrous layer orientation" of Holtman is put forth. Such a rationalization does not raise to the level of a *prima facie* case of obviousness taken from the actual teachings of Holtman or motivations supplied from the art.

In summation, no suggestion comes from within the art to produce a nonwoven web having substantially continuous fibers folded in the Z-direction, as taught and specifically claimed by the present invention.

Should the Examiner feel that there are any issues remaining upon consideration of the present Request, the Examiner is invited to call Applicants' undersigned attorney for any necessary or desired discussion.

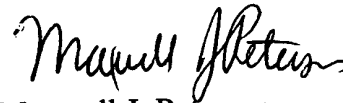
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For all the foregoing reasons, it is respectfully requested that the outstanding rejections of all claims be reconsidered and withdrawn and said claims passed to allowance.

Favorable consideration is requested.

Respectfully submitted,



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